IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.789 OF 2005

Viraf Pesi Maloo — Appellant

Vs.

Sorabji Byramji Bhabha
Sanitorium Trust & ors. — Respondents

Mr.J.M.D'Silva for appellant.
Mr.D.Mogre for respondents.

CORAM: B.H.MARLAPALLE,J.
August 10, 2005.

ORAL ORDER:

1. By the impugned order dated 14-6-2005 the Notice of Motion has been made absolute in terms of prayer clause (a)(i), (ii) and (iii). The said Notice of Motion moved in S.C.Suit No.2306 of 2005 sets out prayer clause (a) as under:

> (a) that pending the hearing and final disposal of the present suit, the Defendants be restrained by an interim Order of Injunction from this Honourable Court from-
>
> (i) inducting into and/or parting with possession and creating third party right in respect of the suit premises viz. Block No.C/9, Building No.3, of Sorabjee Byramjee Bhabha Sanatorium Trust situated at Bandstand, Bandra (West), Mumbai - 400 050.
>
> (ii) the Defendants be prevented from parking any vehicle in the said Sanatorium, Plaintiffs Trust property;
>
> (iii) Defendant be directed to deposit per month Rs.1,807.50 as and by way of

> service charges, as mentioned in Permit No.132 annexed at Exhibit 'B' herein."

2. The appellants were impleaded as defendants in the suit and in their written statement they had challenged the maintainability of the suit. However, an application under Section 9A of CPC was not moved. The plaintiffs are the Trust and the Trustees. Clause (6) of the Trust Deed sets out the aims and objects of the Trust and it reads as under:

> "for building and maintaining sanitary chawls in Bombay in the suburbs in Bombay or elsewhere to be let out free or at cheap rents to poor and middle class Parsi Zoroastrian."

3. The defendant no.1 has been occupying by way of temporary use Block No.C/9 admeasuring 450 sq.ft. in Building No.3 of Sorabjee Byramjee Bhabha Sanatorium Trust situated at Bandstand, Bandra (West), Mumbai 400 050. On or about 3rd June 2000 he had applied in the prescribed form for temporary use of the said sanatorium and he had also undertaken to abide by the Rules of the Trust if such an accommodation was provided to him. After verifying the application, the plaintiffs issued Permit No.132 to the defendant no.1 so as to occupy the said premises for the period from 1st August to 30th

November 2000 with his family members i.e. defendant nos.2 and 3. The Trust noticed that the defendant was parking a fleet of automobile vehicles in the premises of the sanatorium unauthorisedly. These vehicles belonged to different parties and this conduct of the defendant no.1 was contrary to the undertaking he had furnished. The trial Court referred to Clauses 6, 9, 15, 24 and 25 of the Rules and Regulations of the sanatorium agreed to be bound by the defendant no.1 and held that the injunction as prayed for by the plaintiffs was required to be granted. The reasoning given by the trial Court does not suffer from any errors and, therefore, no interference is called for in the impugned order.

4. The appeal is hereby dismissed in limine. This order of dismissal will not preclude the defendants from filing an application under Section 9A of the Civil Procedure Code.

(B.H.MARLAPALLE,J.)